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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.512/99 & 873/99

Date: 15/9/1999

Between:

1. S. Anthony Raj
2. T. Nagaraja
3. P. Munirathanam
4. R. Eswaran
5. P. Suffullakhan
6. M. Chandran
7. L. Seethapathi
8. A.K. Nagesh

.. Applicants in
OA 512/99

1. Khadervali

.. Applicant in
OA 873/99

A n D

1. Union of India
through
General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.

2. The Divisional Railway Manager,
Divisional Office,
South Central Railway,
Guntakal.

3. The Divisional Personnel Officer,
Divisional Office,
South Central Railway,
Guntakal.

4. The Foreman, Loco. Foreman Office,
South Central Railway, Pakala,
Chittoor Dist.

.. Respondents in
both the above OAs

Counsel for the Applicants : Mr. Siva

Counsel for the Respondents: Mr.D.F.Paul for OA 512/99

Ms.Shakti for Mr. J.R.GopalRao
for OA 873/99

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)



O R D E R

(Per Hon. Shri B.S. Jai Parameshwar, Member (J))

Heard Mr. Siva learned counsel for the Applicants in the OAs and Mr. D.F. Paul, learned standing counsel for the respondents in OA 512/99 and Ms. Shakti for Mr. J.R. Gopal Rao, learned standing counsel for the respondents in OA 873/99.

2. No reply has been filed in OA 873/99. The learned standing counsel for the respondents submit that the reply filed in OA 512/99 may be taken as the reply in this OA also.

3. Since facts and reliefs claimed in these applications are ^{identical and} similar these applications are clubbed, heard and are being disposed of by this common order:

4. There are 8 Applicants in OA 512/99 and sole applicant in OA 873/99.

5. The Applicants in these OAs had worked as part-time workers in the Steam Loco Shed, Pakala, Guntakal Division. They submit that they were called as piece rate workers. With the conversion of Locomotion to that of diesel run engines the work in the loco shed was almost wound up and hence they were not engaged in the steam operations. Winding up of the loco shed was completed during the year 1994.

6. The Applicants submit that for the purpose of record respondents had maintained register known as Left Hand Thumb impression (LTI register). The seniority of piece rate worker was based on the number of days work. For the purpose of regularisation or terminating their services, the LTI Register has some relevance. They submit that during the year 1980

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the respondents contemplated winding up of loco shed. With a view to regularise the persons working on piece rate basis a seniority list was attempted to be prepared. The Divisional Personnel Officer, Guntakal sent up a list of piece rate workers to the Loco Formation Pakala. The said list was meant to enlist all the workers working on piece rate basis in the live register maintained by the respondents. The persons enlisted in the live register would be intimated if they express their willingness to absorb against regular vacancies. Even for engagement on casual basis a person must find his name in the live register. They submit that though ^{the} DPO had sent the list of part time workers they were not included in the live register. They submit that a discretion was left to the Loco Foreman in the preparation of live register. They were under the impression that as and when regular vacancies arose their cases would also be considered along with others on the live register.

7. The Applicants submit that two piece rate workers viz. Karunakar and Krupakaran who were similarly placed like them were regularised. Even the respondents had circulated the seniority list on 27-4-1991 detailing the names of individuals who were engaged in the steam loco shed. It is submitted that their names figured in the said list. They felt that regularisation of those two piece rate workers was not as per the seniority list and hence they approached the Hon. High Court of A.P. in W.P.No. 16533/91 for certain reliefs. Ultimately they got the said writ petition withdrawn. Later, they approached this Tribunal by filing ~~these~~ these OAs.

8. They rely on the decision of the Hon. Supreme Court in SLP No. 4259/91 and also on the order dt. 21-12-1998 in OA No. 1505/97 (S.Abdul Sukur & Ors. vs. U.O.I. & Ors) of this Tribunal. (Annexure

A-9, page 25 to 32 of the OA) They submit that they are similarly placed ^{the applicants' in} that of 1505/97. Hence they have filed these applications for a direction to the respondents to consider their claims and if they have rendered service in the ^{Steam} loco shed, regularise them in accordance with their seniority put in by them and for consequential declaration that the applicants are entitled to ^{all} the benefits that flow out of such a direction.

9. In OA 512/99 the respondents have filed their reply. In their reply they submit that the application is barred by time; that the applicants had worked only for a few number of days during the year 1978, that none of the applicants had worked for 120 days on piece rate basis to make them eligible for grant of temporary status. The seniority is based on the total number of days worked after conducting screening by a committee of three officers and on finding them suitable for the posts, subject to availability of vacancies. They submit that the applicants were not engaged continuously and they had not completed the requisite number of 120 days of continuous service as stated above. The steam loco sheds were closed on introduction of diesel locomotives between 1992 & 1994 whereas the Applicants had worked only for a short spell during the year 1978. In page-2 of the reply they have given the details of the number of days the applicants had worked. The Loco Foreman, Pakala was advised to engage the piece rate workers as casual labour as per the seniority of the said workers as and when vacancies arose. The seniority of the workers were sent to the Loco Foreman, Pakala on 2-1-1980. The casual labour who worked continuously for more than 120 days are only eligible for grant of temporary status. The applicants have not fulfilled any of the

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conditions and they are not eligible even for grant of monthly scale of pay and hence the question of conferring temporary status does not arise. The benefit of absorption of casual labour in regular vacancies was admissible only for those who were granted temporary status on completion of 120 days of continuous work on the basis of number of days of service they put in:

10. As regards the regularisation of Krupakaran & Karunakaran they submit that these two labourers ^{had} worked continuously for more than 120 days and they ~~were~~ conferred temporary status on 12-11-1980; that as per order bearing No.G/P/407/III/PAK dt. 4-9-81 they were engaged on monthly scales of pay and as per order dt. 4-1-83 they were empanelled and absorbed in the Railways. They submit that those two employees were sufficiently seniors to the applicants herein. The applicants worked only during the year 1978 for a few days with break in service. They cannot compare themselves with Krupakaran and Karunakaran; that consequent upon the reduction of steam loco engine engagement of casual labour in Mechanical department was completely banned from 1983. The Applicants cannot claim the benefits extended to the parties in SLP No. 4259/91. The applicants did not work in the transshipment shed, Guntakal. They worked at Pakala for short periods.

11. The casual labourers worked prior to 1-1-1981 were directed to register their names in the live register on or before 31-3-1987. The applicants failed to get their names registered in the live register before the stipulated date. Subsequently, the CPO in his letter dt. 28-12-1984



(S.C. No. 166/84) advised that no casual labour should be engaged against vacancies in mechanical department. Hence there was no possibility to engage the applicants as casual labour. The applicants were not at all re-engaged during the last 21 years. The applicants have not registered their names in the live register before 31-3-1987. The applicants neither approached the competent authority nor represented their case during ^{last} the 21 years for consideration but approached this Tribunal after a lapse of nearly 21 years and that this Tribunal cannot consider their claims as they ~~were~~ last engaged as piece rate labour workers in the year 1978. Since the applicants have not approached this Tribunal or the competent authority within the reasonable time they are not entitled to any of the reliefs.

12. Thus they pray for the dismissal of the OA.

13. The applicants herein were engaged as piece rate worker in the year 1978. The applicants have filed rejoinder stating that they had approached Hon. High Court of AP in Writ Petition in 1991 and they were bonafide prosecuting their case before the Hon. High Court, that ultimately they withdrew the writ petition on 11-2-1999 and immediately filed these applications, that the applicants 3,4 and 6 had rendered 57days, 41days and 42 days of part time service but the respondents have not considered the minimum number of days for grant of temporary status in the case of Krupakaran and Karunakaran, that respondents have not been acting fairly, that as many as 59 candidates were engaged on casual basis in the loco shed, a LTI Register was maintained, from this list 23 persons were granted temporary status strictly in accordance



with the seniority in the register, in the normal course ~~labourers~~ from sr.^{No} 24 onwards ought to have been regularised, but the respondents had deviated from this and regularised the services of 10 individuals who were not at all included in the LTI Register. After these 10 persons ~~were~~ regularised, Krupakaran and Karunakaran were also regularised. ~~Had~~ these 10 individuals were not regularised and the seniority in the LTI Register was followed strictly, the applicants would have got their turn for regularisation. After Sr.^{No} 23 the respondent authorities adopted the pick and choose method for conferring the benefits of temporary status leading to eventual absorption, that the loco sheds were closed during the years 1992 and 1994, that they are similarly placed as that of the applicants in OA 1505/97 where certain individuals working the Transshipment sheds had sought for the benefit similar to one claimed in this OA, that this Tribunal considered the contention of the respondents and negated the same. As regards the contention of the respondents that none of them had registered their names in the live register they submit that ^{as per} the railway board letter dt. 21-10-87 the concerned officer who had engaged the services, had to forward the applications for enlistment in the Live Register and Loco Foreman had incorporated their names in the communication sent on 2-4-80, that the authorities had not included their names because their applications were not forwarded by the concerned officers, that they submitted a representation to include their names in the live register but there was no outcome and hence non registration of their names in live register ^{entirely} lies with the department.

14. The Applicants worked in the Steam Loco Shed, Pakala, Guntakal division only for a short spell during the year 1978. In page-4 of the reply the respondents have given the details. The Applicants did not dispute the said details except the applicants 3,4 and 6. Even accepting their version that the applicants 3,4, and 6 had rendered a part time service of 57 days, 41 days and 42 days respectively, ~~but~~ they had not completed 120 days of continuous service.

15. The respondents submit that a casual labour or part time worker who ~~was~~ ^{was} engaged prior to 1-1-1981 ~~was~~ ^{was} required to register ~~this~~ ^{his} name in the live register on or before 31-3-87. It is an admitted fact that the applicants herein ~~said~~ ^{said} have not registered their names in the live register. It was not the duty of the respondents to enlist their names. It was the duty of the Applicants to submit an application to the competent authority detailing the ~~part~~ time or casual service rendered by them in the railways and to request the authorities to enter their names in the live register. As regards this submission the applicants in their rejoinder ~~admitted~~ attempted to make out a case that as per the Railway Board letter dt. 21-10-87 the concerned officer who had engaged their services ~~was~~ ^{was} required to forward the applications of the casual labour for enlistment in the live register. They further submit that the Loco Foreman had incorporated in the communication sent on 2-4-80 to certify that they have been engaged as casual labour. Further they themselves admit that the authorities concerned had not included their names because their names were not forwarded by the concerned official.

The Applicants were fully aware that their names

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were not included. Besides they submit that they had made a representation to include their names in the live register. When their representations were not considered they should have approached the proper judicial forum for their redressal.

16. No explanation is forthcoming from the Applicants for not registering their names in the live register before 31-3-1987. From their own version it is clear that they failed to get their names registered in the live register. They failed to submit their applications for entering their names in the live register before 31-3-1987.

17. It is only during the year 1991 the Applicants herein approached the Hon. High Court of A.P. in WP No.16533/91. No interim order was granted to the Applicants for re-engagement. The Writ Petition came to be withdrawn by the applicants. Prosecuting their claim before the Hon. High Court of AP can be treated as a bonafide prosecution in a wrong forum. Admittedly the applicants were engaged in the year 1978. They have not got their names registered in the live register. They were even aware that their names were not included by the officer concerned. Even to justify their approach to the Hon. High Court of AP in WP 16533/91 they have not placed any material to show that the respondent authorities had ^{illegally} regularised the services of the casual labourers viz. Krupakaran and Karunakaran who had less number of mandays than them. It is

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for them to show whether Krupakaran and Karunakaran had less number of mandays than the applicants. The respondents have in their reply clearly stated as to how the casual ^{services} ~~part-time~~ of Krupakaran and Karunakaran came to be regularised in page 4 of the reply. They have cited the references under which their services were regularised after conferring temporary status and granting monthly scale of pay etc. The applicants have not disputed these facts in their rejoinder. Even at least to show how they felt aggrieved by the action of the respondents in regularising the services of the casual labours viz. Krupakaran and Karunakaran the applicants have not placed any convincing material on record.

18. The applicants rely on a decision in SLP No. 4259/91 and the decision of this Tribunal in OA 1505/97. In SLP 4259/91 the Hon. Supreme Court directed the respondents to formulate a scheme for the purpose of absorption/regularisation of those part time employees who were working in the transshipment shed of SCR and SR.

19. In OA 1505/97 a question was considered as to whether an employee to come under the scheme so formulated should have worked at the time of closure of the transshipment shed. This Tribunal took the view ^{that} irrespective of the fact whether an employee was working at the closure of the shed or earlier his case should be considered for regularisation.

20. Even considering for a moment that the applicants were engaged for short spell during the year 1978 the fact remains that they had not got their names registered within the stipulated

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date viz. 31-3-87. The very fact that their names were not included in the live register and the very fact that the Applicants knowing fully well kept quite without taking any action. Their approaching the Hon. High Court of AP in the year 1991 cannot be considered as agitating their stale claims for inclusion of their names in the live register or for regularisation of their service. As already observed they disputed in the writ petition the regularisation of services of Krupakaran and Karunakaran on the ground that those two labourers had less number of mandays. Now the respondents in their reply have clearly stated that those two labourers were senior to the Applicants and that they had worked continuously for 120 days before grant of temporary status and regularisation. When that is so, approaching the Hon. High Court in the Writ Petition may not enure any benefit to the Applicants. Further they have not proved why the respondent authorities failed to enter their names in the live register. They submitted representation and did not choose to approach the proper judicial forum for their redressal at the appropriate time.

21. As contended by the learned counsel for the respondents the Applicants having worked for a short period during the year 1978 they approached this Tribunal ~~for~~ after a lapse of 21 years relying upon the decision in the SLP 4259/91 and on the order based in OA 1505/97. In fact by the time judgment in the SLP and the order of this Tribunal were passed the claim of the Applicants were barred by time. Even accepting for the moment they had any grievance they should have approached the appropriate forum within three years after the disengagement from their part time/casual labour or from the time when they themselves came to know that their names were not

included in the live register and that their representation to include their names in the live register was not considered by the respondent authorities.

22. Considering all these facts I am of the opinion that the Applicants have failed to point out any irregularity or any act of discrimination on the part of the respondents in regularising the services of two casual labourers viz. Krupakaran and Karunakaran during the year 1991; that regularisation of those two officials do not in any way confer a right to the Applicants to claim regularisation or inclusion of their names in the live register. Their agitation before the Hon. High Court cannot be considered as the one for regularisation of their services on the ground that they were not included in the live register by the fault of the respondent authorities.

23. Hence in my opinion the case of the Applicants cannot be considered. Their claim that they are similarly placed as that of persons in SLP 4259/91 and Applicants in OA 1505/97 cannot be accepted. They have not produced the details of the order passed in SLP 4259/91. The Applicants cannot rely on the judgments or order, to claim any right or benefit or privilege, which right or benefit or privilege was evidently renounced by them by their own conduct and inactions.

24. In that view of the matter the applications are beyond time and they have not made out any justifiable case for the regularisation.




25. The Applicants are not entitled to claim any of the reliefs in the OA on account of delay and laches.

26. In my view, the applications are liable to be dismissed. Accordingly the applications are dismissed. No order as to costs.

MD


(B.S. JAI PARAMESHWAR)
Member (J)

15.9.99


16-9-99